

Rules and Regulations

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MERIT SYSTEMS PROTECTION BOARD

5 CFR Part 1201

Practices and Procedures

AGENCY: Merit Systems Protection Board.

ACTION: Interim rule; request for comments.

SUMMARY: The Merit Systems Protection Board is amending its rules of practice and procedure to provide notice that a judge may exclude a party or representative from all or any portion of a Board proceeding before him or her because of misconduct. The intent of this amendment is to inform parties and their representatives that MSPB judges have this authority and will exercise it when necessary to ensure that adjudication of cases proceeds expeditiously and without undue disruption.

DATES: Effective date November 25, 1997. Submit written comments on or before January 26, 1998.

ADDRESSES: Send comments to Robert E. Taylor, Clerk of the Board, Merit Systems Protection Board, 1120 Vermont Avenue, NW, Washington, DC 20419. Comments may be sent via e-mail to mspb@mspb.gov.

FOR FURTHER INFORMATION CONTACT: Robert E. Taylor, Clerk of the Board, (202) 653-7200.

SUPPLEMENTARY INFORMATION: The Board's current rule at 5 CFR 1201.41(b) provides notice that a judge "will take all necessary action to avoid delay in all proceedings" and "will have all powers necessary to that end unless those powers are otherwise limited by law." It further provides explicit notice of a judge's authority to "maintain decorum, and exclude any disruptive persons from the hearing," [§ 1201.41(b)(6)], "[e]xclude any person from the hearing for good reason" [§ 1201.41(b)(7)], and

"[i]mpose sanctions as provided under § 1201.43 of this part"

[§ 1201.41(b)(11)]. Section 1201.43 permits a judge to "impose sanctions upon the parties as necessary to serve the ends of justice."

These provisions in the Board's current rules are sufficient to permit a judge to exclude a party or representative from a proceeding when the person engages in misconduct. The Board is amending its regulations to provide explicit notice that a judge may exercise such authority at a hearing or at any other point in a proceeding, such as a settlement conference or prehearing conference.

The Board is amending its rule at 5 CFR 1201.31 ("Representatives") by adding a new paragraph (d) to make clear that misconduct by representatives, as well as parties or other persons, may result in exclusion by a judge from the Board proceeding before him or her. The new paragraph (d) also requires that the reasons for an exclusion be documented in the record and that, where a representative is excluded, the party be given a reasonable time to obtain new representation. The new provision also states that the Board, when considering a petition for review, is not bound by a judge's decision to exclude a person from the proceeding below.

The Board also is amending its rule at 5 CFR 1201.41 ("Judges") by revising subparagraph (b)(7) to provide for exclusion from "all or any part of the Board proceeding before him or her" rather than from "the hearing."

The Board is publishing this rule as an interim rule pursuant to 5 U.S.C. 1204(h).

List of Subjects in 5 CFR Part 1201

Administrative practice and procedure, Civil rights, Government employees.

Accordingly, the Board amends 5 CFR part 1201 as follows:

PART 1201—[AMENDED]

1. The authority citation for part 1201 continues to read as follows:

Authority: 5 U.S.C. 1204 and 7701, and 38 U.S.C. 4331, unless otherwise noted.

2. Section 1201.31 is amended by adding a new paragraph (d) at the end, as follows:

§ 1201.31 Representatives.

* * * * *

(d)(1) A judge may exclude a party, a representative, or other person from all or any portion of the proceeding before him or her for contumacious misconduct or misbehavior that obstructs the hearing.

(2) When a judge excludes a person from participation in a proceeding, the judge shall document the reasons for the exclusion in the record.

(3) A proceeding will not be delayed because the judge excludes a person from the proceeding, except that where the judge excludes a party's representative, the judge will give the party a reasonable time to obtain another representative.

(4) The Board, when considering a petition for review of a judge's initial decision under subpart C of this part, will not be bound by any decision of the judge to exclude a person from the proceeding below.

3. Section 1201.41 is amended by revising paragraph (b)(7) to read as follows:

§ 1201.41 Judges.

* * * * *

(b) * * *

(7) Exclude any person from all or any part of the proceeding before him or her for good reason;

* * * * *

Dated: November 19, 1997.

Robert E. Taylor,

Clerk of the Board.

[FR Doc. 97-30831 Filed 11-24-97; 8:45 am]

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DEPARTMENT OF AGRICULTURE

Farm Service Agency

7 CFR Part 729

Commodity Credit Corporation

7 CFR Parts 1421 and 1446

RIN 0560-AFO1

1997-Crop Peanuts; National Poundage Quota; National Average Support Level for Quota and Additional Peanuts; and Minimum Commodity Credit Corporation Export Edible Sales Price for Additional Peanuts

AGENCIES: Farm Service Agency and Commodity Credit Corporation, USDA.